

REMARKS

Claims 1-21 were pending in the present application.

Claims 2-9 are rejected.

Claims 1 and 10-21 were withdrawn from consideration.

Claims 1-21 remain pending in the present application.

Reconsideration of the claims is respectfully requested.

I. RESTRICTION REQUIREMENT

In the Office Action, the Office acknowledged Applicants' election of Group I in its November 20, 2006 Response with traverse. Applicants note that a Petition Pursuant to 37 C.F.R. §1.144 requesting that the October 20, 2006 Restriction Requirement be withdrawn has been submitted concurrently with this Response.

II. CLAIM REJECTION UNDER 35 U.S.C. §102

Claims 2-7 and 9 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,713,490 to *Oden, et al.*, hereinafter "*Oden*". This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. §102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP §2131, p. 2100-67 (8th ed., rev. 5, August 2006) (*citing In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every

limitation of the claimed invention is found in a single prior art reference. *Id.* (*citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Independent Claim 2 of the present application currently requires:

A vending machine comprising:
a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity;
a plurality of column walls defining a plurality of stack areas for storing product containers;
a door pivotally mounted to the cabinet frame, said door being adapted to selectively close the central cavity;
an oscillator pivotally mounted at a lower portion of one of the plurality of stack areas, *said oscillator including a frame defining a product retention zone*; and
a bail cap attached to the oscillator, said bail cap including an intermediate portion adapted to selectively support product containers in said one of the plurality of stack areas, *said bail cap being adjustable relative to the oscillator in order to accommodate product containers of varying sizes in the product retention zone*. (emphasis added).

Oden, on the other hand, at the very most teaches an adjustable vending mechanism 12 in which products that are retained within the rear section 32b by a rear spacer 42, the position of which also is forwardly and rearwardly adjustable to accommodate products of different lengths in the rear stack of the ach adjustable vending mechanism 12. (*Oden*, column 4, lines 25-30; Figure 2). *Oden* requires that the positions of left and right product retainers 36a and 36b are independently forwardly and rearwardly adjustable to accommodate products of different lengths in the front stack of each adjustable vending mechanism 12. (*Id.*, column 4, lines 15-18; Figures 2 and 5). In addition, *Oden* requires that cradles 74a and 74b are positioned adjacent to the trailing edges of the front and rear fixed product ramps 70a and 70b, respectively, to releasably support the bottommost products in the front and rear corded stacks below the outlets 60a and 60b. (*Id.*, column 4, line 64- column 5, line 2; Figures 2 and 5).

Oden teaches cradles 74a and 74b having a generally triangular cross-section with slightly concave sides that are rotatable on a shaft 76 mounted in apertures through the front and rear mechanical plates and the center support plate. (*Id.* at column 5, lines 2-12; Figures 2 and 5). Cradles 74a and 74b have a longitudinal axis parallel to the longitudinal axes of the products. (*Id.* at column 5, lines 5-8; Figure 2).

In short, the adjustable vending mechanism 12 of *Oden* fails to teach a number of structural elements required by Claim 2. For example, *Oden* fails to teach or disclose an oscillator pivotally mounted at a lower portion of one of the plurality of stack areas, *said oscillator including a frame defining a product retention zone*, as required by Claim 2. *Oden* also fails to teach or disclose a *bail cap attached to an oscillator having an intermediate portion adapted to selectively support product container* in said one of the plurality of stack areas, as also required by Claim 2. Furthermore, *Oden* fails to teach or disclose a *bail cap being adjustable relative to the oscillator* in order to *accommodate product containers of varying sizes in the product retention zone* (of the oscillator), as required by Claim 2.

Claim 2 and its dependents, Claims 3-7 and 9, are thus allowable. Accordingly, the Applicants respectfully request that the Office withdraw the §102 rejection.

II. CLAIM REJECTION UNDER 35 U.S.C. §103

Claims 2-9 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Oden* in view of U.S. Patent No. 2,890,813 to *Childers, et al.*, hereinafter “*Childers*”. This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP §2142, p. 2100-125 (8th ed. rev. 5, August 2006). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

Claims 2-7 and 9 are allowable as shown above. Claim 8 ultimately depends from allowable Claim 2 and is thus also allowable. In addition, *Oden*, either alone or in any combination with *Childers*, fails to teach or disclose the *oscillator* and *bail cap* required by Claim 2 as shown above. Moreover, there is no suggestion or motivation within either of these references to prompt one of ordinary skill to selectively combine and then *seek out* still others as required by Claim 2 and ultimately by Claims 3-9.

Accordingly, the Applicants respectfully request that the Office withdraw the §103 rejection.

CONCLUSION

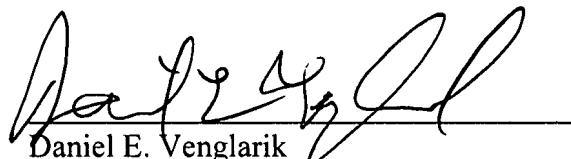
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS, P.C.

Date: 6-6-2007



Daniel E. Venglarik
Registration No. 39,409

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3621 (direct dial)
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: *dvenglarik@munckbutrus.com*